

**ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010**  
**COMMITTEE STATEMENT (CORRECTED)**  
**LB1010**

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**Hearing Date:** Thursday February 11, 2010  
**Committee On:** Natural Resources  
**Introducer:** Pankonin  
**One Liner:** Provide procedures and limitations on the use of eminent domain by natural resources districts for recreational trails

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8                      Senators Carlson, Cook, Dubas, Fischer, Haar, Langemeier, McCoy, Schilz

**Nay:**

**Absent:**

**Present Not Voting:**

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**Proponents:**

Senator Dave Pankonin  
Renea Panska  
Roger Gaebel  
Jim Panska  
Steve Althouse  
Glenn Johnson

Geoffrey Ruth  
John Winkler  
Steve Grasz  
Stan Staab  
Ross Greathouse  
Bob Rikli  
Rob Schupbach

**Representing:**

Introducer  
Self  
Self  
Self  
Nebraska Farm Bureau  
Nebraska Association of Resources Districts, Lower Platte South Natural Resources District  
Nebraska Soybean Association  
Papio-Missouri River Natural Resources District  
Papio-Missouri River Natural Resources District  
Lower Elkhorn Natural Resources District  
Nebraska Trails Council  
Self  
Self

**Opponents:**

Sadie Nicholson

**Representing:**

Self

**Neutral:**

James Cook  
John K. Hansen  
Ken Winston

**Representing:**

Great Plains Trails Network  
Nebraska Farmers Union  
Nebraska Sierra Club

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**Summary of purpose and/or changes:**

LB 1010 proposes the utilization of a new procedure for use of eminent domain by a natural resources district taking private real property for a recreational trail.

The bill requires a district to consider at a public hearing: the proposed trail route, mode of travel to be permitted, adjacent areas that will be used for various purposes, what makes the proposed route suitable for a trail, real property ownership and its use, costs of property acquisition, proposed use of eminent domain, development and maintenance plans, and anticipated problems.

The bill would further allow a district to move forward with eminent domain by: negotiation with and consent of property owners, or if negotiations have failed, the NRD board may adopt a resolution to formally consider using eminent domain via a public hearing. The decision to use eminent domain would require a supermajority vote (75%) if the board found certain criteria had been met. The bill also calls for limited liability of the property owner and provides an appeal process.

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**Explanation of amendments:**

The committee amendment, AM 2029, replaces the bill and provides a new procedure for the use of eminent domain for trails.

Section 2 provides definitions, including "supermajority" as meaning 67%.

Section 3 requires a district to consider the following before establishing a trail: the proposed route and mode of transportation; adjacent areas to be used along the route; characteristics making the route suitable as a trail; development, operation and maintenance plans; anticipated problems; status of real property ownership and potential use; estimated cost to acquire the real property; and the real property interest needed to do the trail, right of way acquisition process, and circumstances under which eminent domain may be used.

Section 4 allows a district to acquire private real property for the trail if the section 3 process is followed. If the district is not able to acquire property through good faith negotiations with the property owner, it may, by a supermajority vote, adopt a resolution calling for a public hearing, held no sooner than 45 days after notice, to determine whether to use eminent domain. If the board finds, by clear and convincing evidence, that the criteria are met, it may, by a supermajority vote, elect to use eminent domain.

The criteria: (a) a public hearing, with proper notice, on the proposed trail plan, (b) good faith attempts to negotiate with landowners that have failed, (c) consideration of all other possible trail routes with special attention given to private property that would have to be acquired, (d) location of the trail took into consideration the directness of the route, trail design and costs, safety to users, vehicle operators, and adjacent persons. Also to the adverse impacts and intrusions on private landowners, (e) good faith attempts to address private landowners' concerns with trail design, privacy, land protection, management, and maintenance, and (f) trail development and management is "harmonized with and complement" established forest or agricultural plans for the private property.

Section 5 requires eminent domain proceedings to be conducted according to the existing statutes, which provide a process for how the power is to be completed.

Section 6 states that the adjoining private landowner has no duty to maintain or repair the trail, and no duty to protect trail users from dangerous conditions, unless the condition is due to an intentional or negligent act of the landowner.

It also requires that a written negotiated agreement between the district and landowner state their respective rights and obligations.

Section 7 allows a private landowner to appeal a district's decision to use eminent domain to the district court.

Sections 8 through 10 contain technical changes, and Section 11 contains an emergency clause

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Chris Langemeier, Chairperson